

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE
APPEAL FROM ORDER NO. 686 OF 2005

Shri Vasant Shivram Patil .. Appellant

Vs.

Dundayappa Appaya Chougule
and ors. .. Respondents

Ms. A.S. Prabhu h/f Mr. N.V. Bandiwadekar for
appellant.

CORAM: B.H. MARLAPALLE, J.

Date : October 05, 2005.

P.C.:

1. Heard the learned counsel for the appellant who is aggrieved by the order dated 15/4/2005 passed by the learned Additional District Judge at Gadhingalaj rejecting the application for restoration of an appeal.

2. It is noted that the appellant had instituted Regular Civil Suit No.28 of 1986 in the court of Civil Judge, Senior Division, Kolhapur and the said suit was dismissed in default on 13/6/1986. Rather than applying for restoration of the suit, the plaintiff filed an appeal which was initially numbered as Appeal No.321 of 1986 and on its transfer to the Court of the learned Addl. District Judge at Gadhahingalaj it came

to be renumbered as Regular Civil Appeal No.6 of 1996. On 16/7/1999 the appeal was taken up for hearing and as nobody was present on behalf of the appellant the appeal was dismissed for non prosecution. An application for restoration registered as Misc. Application No.28 of 1999 was submitted on or about 6/8/1999.

3. The reason given in the restoration application was two folds. Firstly, the applicant contended that he could not remain present due to some unforeseen circumstances and his advocate could not remain present as he was sick. Both these reasons have been found to be without any substance after taking into consideration the oral depositions of the applicant as well as another witness who was a mechanic.

4. The Lower Appellate Court noted that after this appeal was transferred in the year 1996 it was ready for hearing and every time when it came up for hearing there was an application for adjournment. Such adjournment applications were moved on 1/9/1998, 19/9/1998, 6/10/1998, 13/10/1998 and 10/12/1998. Subsequently adjournment applications were also moved

on 15/1/1999, 29/1/1999 and 15/3/1999 on which day it was made clear that on the next date i.e. on 23/3/1999 no further adjournment would be granted. However, on 23/3/1999 and 13/4/1999 the learned Advocate for the appellant remained absent. Same was the case on 7/6/1999. On 16/7/1999 when the appeal was called out for hearing, none was present for the appellant and the learned Judge observed that the whole conduct of the appellant indicated his reluctance to proceed with the hearing of the appeal and he dismissed the appeal. The learned Advocate who represented the appellant neither filed an affidavit regarding his sickness nor was he examined as a witness. The trial court was right in noting that appellant himself was reluctant to go ahead with the proceedings and he could not make out a case of good and sufficient reasons for restoration of the appeal.

5. No interference is called for in the view taken by the Lower Appellate Court and as supported by cogent reasons. The appeal is, therefore, dismissed in limine.

(B.H. Marlapalle,J.)